(5)

Supreme Court, U.S.
FILED
MAY 29 1998
CLERK

No. 97-7597

In The

# Supreme Court of the United States

October Term, 1997

PATRICK KNOWLES,

*Petitioner,*

vs.

STATE OF IOWA,

*Respondent.*

On Writ Of Certiorari To
The Supreme Court Of Iowa

## PETITIONER'S BRIEF

PAUL ROSENBERG
*(Counsel of Record)*
MARIA RUHTENBERG
PAUL ROSENBERG &
ASSOCIATES, P.C.
601 Locust Street, Suite 1022
Des Moines, Iowa 50309
Telephone: (515) 245-3828
*Counsel for Petitioner*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

35 pp

## QUESTION PRESENTED

Can a state, consistent with the Fourth Amendment, confer to police officers a blanket authorization to conduct a full-blown search of a motor vehicle upon issuance of a traffic citation?

TABLE OF CONTENTS


Page

QUESTION PRESENTED ..... i

TABLE OF CONTENTS ..... ii

TABLE OF AUTHORITIES ..... iv

OPINION BELOW ..... 1

JURISDICTION ..... 1

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED ..... 1

STATEMENT OF THE CASE ..... 2

A. Facts ..... 2

B. Search Incident to Citation Statute ..... 3

SUMMARY OF THE ARGUMENT ..... 4

ARGUMENT ..... 5

I. THE SEARCH INCIDENT TO CITATION IS UNREASONABLE UNDER ESTABLISHED FOURTH AMENDMENT JURISPRUDENCE .... 5

A. Introduction ..... 5

B. A Search Conducted Without Probable Cause Violates the Fourth Amendment ..... 6

C. The Search Incident to Arrest Exception Requires a Custodial Arrest ..... 8

1. The Search Incident to Arrest Exception .. 8

2. *Robinson* Does Not Apply Without Custodial Arrest ..... 10

D. Probable Cause is Required to Search in Absence of a Custodial Arrest ..... 15




TABLE OF CONTENTS – Continued


Page

II. EXPANDING POLICE AUTHORITY TO SEARCH INCIDENT TO CITATION ABSENT PROBABLE CAUSE THREATENS THE SECURITY OF THE CITIZENRY AND IS NOT COMPELLED BY THE INVESTIGATIVE NECESSITY OF THE OFFICER ..... 19

A. Introduction ..... 19

B. The Iowa Law's Reach is Expansive and Will Subject Millions of Citizens to Intrusive Searches for the Most Minor of Offenses .. 20

C. This Search is Intrusive and Humiliating When Compared to the Gravity of Conduct and Lack of Government Interest ..... 22

D. The Potential of Discriminatory Enforcement is Intolerable ..... 24

CONCLUSION ..... 26

## TABLE OF AUTHORITIES

Page

CASES:

*Almeida-Sanchez v. United States*, 413 U.S. 266 (1973) ..... 16

*Berkemer v. McCarty*, 468 U.S. 420 (1984) ..... 10, 19

*Brinegar v. United States*, 338 U.S. 160 (1949) ..... 7

*California v. Carney*, 471 U.S. 386 (1985) ..... 15

*Camara v. Municipal Court*, 387 U.S. 523 (1967) ..... 7

*Carroll v. United States*, 267 U.S. 132 (1925) ... 15, 16, 23

*Chandler v. Miller*, 117 S. Ct. 1295 (1997) ..... 8

*Chimel v. California*, 395 U.S. 752 (1969) ..... 8, 9, 11

*Commonwealth v. Grosso*, 672 A.2d 792 (Pa. Super. Ct. 1996) ..... 18, 19

*Cooper v. California*, 386 U.S. 58 (1967) ..... 23

*Cupp v. Murphy*, 412 U.S. 291 (1973) ..... 11, 25

*Davis v. Mississippi*, 394 U.S. 721 (1969) ..... 25

*Delaware v. Prouse*, 440 U.S. 648 (1979) ..... 25

*Dougherty v. State*, 392 A.2d 1165 (Md. Spec. App. 1978) ..... 13

*Gustafson v. Florida*, 414 U.S. 260 (1973) ..... 8, 9, 13

*Henry v. United States*, 361 U.S. 98 (1928) ..... 6

*Johnson v. State*, 537 So. 2d 117 (Fla. Ct. App. 1988) .... 18

*Linnett v. State*, 647 S.W.2d 672 (Tex. Ct. App. 1983) .... 13

*Maryland v. Wilson*, 117 S. Ct. 882 (1997) ..... 23

*Michigan v. Long*, 463 U.S. 1032 (1983) ..... 16, 17, 23



## TABLE OF AUTHORITIES – Continued

Page

*Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990) ..... 10

*New Jersey v. T.L.O.*, 469 U.S. 325 (1985) ..... 7, 25

*New York v. Belton*, 453 U.S. 454 (1981) ..... 9, 13, 17

*Ohio v. Robinette*, 117 S. Ct. 417 (1996) ..... 22

*Pennsylvania v. Mimms*, 434 U.S. 106 (1977) ..... 23

*People v. Bland*, 884 P.2d 312 (Colo. 1994) ..... 13

*People v. Guzman*, 551 N.Y.S.2d 709 (N.Y. App. Div. 1990) ..... 18

*People v. Koutsakis*, 649 N.E.2d 605 (Ill. Ct. App. 1995) ..... 18

*People v. Meredith*, 763 P.2d 562 (Colo. 1988) ..... 13, 18

*People v. Penny*, 544 N.E.2d 1015 (Ill. Ct. App. 1989) ..... 18

*Sibron v. New York*, 392 U.S. 40 (1968) ..... 15, 21, 22

*Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989) ..... 8

*South Dakota v. Opperman*, 428 U.S. 364 (1976) ..... 7

*State v. Braxton*, 368 S.E.2d 56 (N.C. Ct. App. 1988) .... 18

*State v. Ceron*, 573 N.W.2d 587 (Iowa 1997) ..... 20

*State v. Cook*, 530 N.W.2d 728 (Iowa 1995) ..... 4, 20

*State v. Davis*, 477 So. 2d 504 (Ala. Ct. App. 1985) .... 13

*State v. Doran*, 563 N.W.2d 620 (Iowa 1997) ..... 4

*State v. Flores*, 685 P.2d 999 (Or. Ct. App. 1984) ..... 18

TABLE OF AUTHORITIES – Continued

Page

*State v. Henry*, 910 P.2d 1290 (Wash. Ct. App. 1995) .... 18

*State v. Knowles*, 569 N.W.2d 601 (Iowa 1997).. 4, 20, 21

*State v. Ledbetter*, 540 P.2d 824 (N.M. Ct. App. 1975) ..... 13

*State v. Swanson*, 475 N.W.2d 148 (Wis. 1991) ..... 13

*State v. Taylor*, 808 P.2d 324 (Ariz. Ct. App. 1990), *appeal denied*, 821 P.2d 166 (Ariz. 1991), *cert. denied*, 503 U.S. 998 (1992) ..... 14

*State v. Taylor*, 683 N.E.2d 367 (Ohio Ct. App.1996) .... 18

*State v. Washington*, 623 So. 2d 392 (Ala. Crim. App. 1993) ..... 18

*Terry v. Ohio*, 392 U.S. 1 (1968)..... *passim*

*Thomas v. State*, 453 So. 2d 1075 (Ala. Ct. App. 1984) ..... 13

*Treasury Employees v. Von Raab*, 489 U.S. 656 (1989) ..8, 23

*United States v. Chadwick*, 433 U.S. 1 (1977)..... 15

*United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) ..7, 10

*United States v. Mota*, 982 F.2d 1384 (9th Cir. 1993) .... 13

*United States v. Parr*, 843 F.2d 1228 (9th Cir. 1988) .... 13

*United States v. Robinson*, 414 U.S. 218 (1973) .... *passim*

*United States v. Robinson*, 471 F.2d 1082 (D.C. Cir. 1972), *rev'd on other grounds*, 414 U.S. 218 (1973) .... 11

*United States v. Tapia*, 912 F.2d 1367 (11th Cir. 1990) .... 18

*United States v. Walker*, 933 F.2d 812 (10th Cir. 1991).....13, 18



TABLE OF AUTHORITIES – Continued

Page

*Vernonia School Dist. 47J v. Acton*, 115 S. Ct. 2386 (1995) .....8, 23

*Weeks v. United States*, 232 U.S. 383 (1914)..... 8

*Wong Sun v. United States*, 371 U.S. 471 (1963)..... 7

*Whren v. United States*, 116 S. Ct. 1769 (1996)..... 25

CONSTITUTIONAL PROVISIONS:

U.S. Const. amend. IV ..... *passim*

STATUTES:

Ariz. Rev. Stat. § 13-3903(A) (1989)..... 14

Ariz. Rev. Stat. § 13-3903(F) (1989) ..... 14

Iowa Code § 321.328 (1997) ..... 21

Iowa Code § 321.436 (1997) ..... 21

Iowa Code § 321.445 (1997) ..... 21

Iowa Code § 321.485 (1997) ..... 20

Iowa Code § 804.5 (1997) ..... 15

Iowa Code § 805.1 (1997) ..... 15

Iowa Code § 805.1(1) (1997)..... 1

Iowa Code § 805.1(4) (1997)..... 2

Newton, Iowa, Code § 11.0353.2(J) (1993) ..... 21

Newton, Iowa, Code § 11.1102 (1993) ..... 21

Newton, Iowa, Code § 13.0313 (1993) ..... 21

TABLE OF AUTHORITIES – Continued

Page

TREATISES, ARTICLES AND MISCELLANEOUS:

3 LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 5.2(c), at 74 (1996)..... 16

Joseph D. Grano, *Probable Cause and Common Sense: A Reply to the Critics of Illinois v. Gates*, 17 U. Mich. J.L. Ref. 465 (1984)..... 6

Barbara C. Salken, *The General Warrant of the Twentieth Century? A Fourth Amendment Solution to Unchecked Discretion to Arrest for Traffic Offenses*, 62 Temp. L. Rev. 221 (1989)..... 6

Jack K. Weber, *The Birth of Probable Cause*, 11 Anglo-Am. L. Rev. 155 (1982)..... 6

ABA Standard § 10-2.3 (1986)..... 14

ABA Standard § 10-2.4 (1986)..... 14



## OPINION BELOW

The opinion of the Iowa Supreme Court (App. pp. 30-34) is officially reported at 569 N.W.2d 601. The district court's ruling and judgments (App. pp. 20-21, 26-29) are not reported.

## JURISDICTION

The Iowa Supreme Court entered its judgment on October 22, 1997. The petition for writ of certiorari was filed on January 20, 1998, and was granted on March 23, 1998. Jurisdiction of this Court is conferred by 28 U.S.C. § 1257(a).

## CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

### Fourth Amendment to the United States Constitution

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### Iowa Code section 805.1(1) (1997)

Except for an offense for which an accused would not be eligible for bail under section 811.1 or a violation of section 708.11, a peace officer having grounds to make an arrest may issue a citation in lieu of making an arrest

without a warrant, or if a warrantless arrest has been made, a citation may be issued in lieu of continued custody.

**Iowa Code section 805.1(4) (1997)**

The issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search.

## STATEMENT OF THE CASE

### A. Facts

On March 9, 1996, Patrick Knowles was operating his motor vehicle in the city of Newton, Iowa, and was pulled over for speeding. (App. pp. 12-13). The police officer approached Knowles's car, requested his license, and returned to his patrol car. (App. pp. 16-17). The officer checked the license and determined his license was valid, and there were no warrants for his arrest. (App. p. 17). After issuing a speeding citation, the officer detained Knowles and proceeded to conduct a thorough search of his person and the passenger compartment of his vehicle. (App. pp. 15-16, 17-18). The officer located marijuana and a pipe, and he then arrested Knowles. (App. p. 16).

The State charged Knowles with the offenses of possession of marijuana and keeping marijuana in a motor vehicle. (App. pp. 2-5). Knowles filed a motion to suppress under the Fourth Amendment to the United States



Constitution, challenging the search and admissibility of the marijuana and pipe. (App. pp. 6-8).

At the evidentiary hearing, the arresting officer testified that he had no probable cause or suspicion that Knowles was involved in any criminal activity, nor did he consent to the search of his person or his automobile. (App. pp. 15, 17-19). The officer gave the following justification for his actions: "I wrote up the citation and waited for Officer Springer to come and assist me, then went back up to Mr. Knowles's vehicle, issued him the citation, and explained to him that I had a right to search him and his vehicle incident to the citation." (App. p. 17). Following the hearing, the court denied the motion to suppress. (App. pp. 20-21).

The court found Knowles guilty on both offenses and sentenced him to concurrent terms of 90 days imprisonment on each charge. (App. pp. 26-29).

### B. Search Incident to Citation Statute

In 1983, the State of Iowa enacted a statute which preserved the authority to conduct a "search incident to arrest" in those circumstances where police elect to forego making a custodial arrest and instead issue a citation. Iowa Code section 805.1(4) reads in pertinent part:

> The issuance of a citation in lieu of arrest or in lieu of continued custody does not affect the officer's authority to conduct an otherwise lawful search.

Twelve years later, the Iowa Supreme Court, in a ruling specifically reserving the issue of the constitutionality of the legislation, held: "The Iowa legislature has thus created a search incident to citation exception to the search warrant requirement." *State v. Cook*, 530 N.W.2d 728, 731 (Iowa 1995). Then, in a 5 to 4 decision, the Iowa Supreme Court found the search reasonable under the Fourth Amendment. *State v. Knowles*, 569 N.W.2d 601, 602 (Iowa 1997); *see also State v. Doran*, 563 N.W.2d 620, 623 (Iowa 1997).

## SUMMARY OF THE ARGUMENT

Iowa's law authorizing police to search incident to issuance of a citation violates Fourth Amendment protections because it purports to allow a full blown search without probable cause, or even reasonable suspicion. The requirement of probable cause is a fundamental component of the Fourth Amendment, which this Court has consistently enforced. The English and common law antecedent to the Bill of Rights reinforce this requirement.

Furthermore, because the Iowa law does not require a custodial arrest as a prerequisite to the search, the suspicionless intrusion does not fall within the search incident to arrest doctrine. This doctrine has not been, and should not be, extended to allow a full blown search upon the extremely common occurrence of momentarily detaining a citizen to issue a citation.

With the exception of Iowa, all jurisdictions that have addressed this issue have held that such a search is unreasonable, and this brief encounter between a police



officer and a citizen is not the functional equivalent of an arrest so as to authorize a suspicionless search.

Given the large number of citable regulatory offenses and the number of otherwise law abiding citizens who run afoul of these laws, the authority to search incident to citation would be a frightening expansion of police power. There are no public safety considerations that justify abandoning historical protections from such arbitrary government searches. The potential for abusing such a power is as threatening today as it was hundreds of years ago when frequent government abuses prompted enactment of citizen protections in the first place.

The search of Patrick Knowles's motor vehicle under Iowa's search incident to citation law was unreasonable. A state statute may not authorize a search forbidden by the Fourth Amendment and the contraband uncovered and seized must be suppressed as evidence.

## ARGUMENT

### I. THE SEARCH INCIDENT TO CITATION IS UNREASONABLE UNDER ESTABLISHED FOURTH AMENDMENT JURISPRUDENCE

#### A. Introduction

With rare exception, this Court has required probable cause, or at least reasonable suspicion, before police may conduct a search. One departure from this requirement is a search incident to arrest.

Under this exception, police may search an automobile upon the arrest of its driver without any independent suspicion. The arrest supplies the entire justification for the search and dispenses with the need for a warrant or probable cause.

The doctrine, however, requires a custodial arrest. Without such an arrest, a citizen's motor vehicle is entitled to Fourth Amendment protection, and a search can be carried out only upon probable cause.

Long settled Fourth Amendment principles establish that the search of Patrick Knowles's vehicle, without either probable cause or a custodial arrest, was unlawful.

### B. A Search Conducted Without Probable Cause Violates the Fourth Amendment

Seventy years ago, this Court first discussed the Fourth Amendment's probable cause requirement and its historical roots in colonial America and England. *Henry v. United States*, 361 U.S. 98, 100-01 (1928). The governmental abuses associated with general warrants and writs of assistance prompted the framers of the Constitution to require probable cause as a prerequisite to issuance of a warrant to arrest or search. *Id.* at 102-03; Barbara C. Salken, *The General Warrant of the Twentieth Century? A Fourth Amendment Solution to Unchecked Discretion to Arrest for Traffic Offenses*, 62 Temp. L. Rev. 221, 254-56 (1989); Joseph D. Grano, *Probable Cause and Common Sense: A Reply to the Critics of Illinois v. Gates*, 17 U. Mich. J.L. Ref. 465, 478-95 (1984); Jack K. Weber, *The Birth of Probable Cause*, 11 Anglo-Am. L. Rev. 155 (1982).



Throughout this century, this Court has continually emphasized the probable cause requirement with respect to warrantless arrests and searches.[1] Under the Fourth Amendment, it is imperative that a search and seizure without a warrant be made upon existing probable cause or it is unreasonable and unlawfully made. *Brinegar v. United States*, 338 U.S. 160, 164 (1949). "[S]ome quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure." *United States v. Martinez-Fuerte*, 428 U.S. 543, 560-61 (1976). "Ordinarily, a search – even one that may permissibly be carried out without a warrant – must be based upon 'probable cause' to believe that a violation of the law has occurred." *New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985).

In a narrow class of circumstances, this Court has found searches reasonable without antecedent probable cause. For example, police officers may conduct a protective pat-down upon existence of the less stringent "reasonable suspicion" standard. *Terry v. Ohio*, 392 U.S. 1, 27 (1968). The government can perform administrative regulatory inspections without individualized suspicion of violations of the law. *Camara v. Municipal Court*, 387 U.S. 523, 538-39 (1967). Police officers may, without probable cause, perform an inventory search of an impounded automobile. *South Dakota v. Opperman*, 428 U.S. 364, 367-69 (1976). Officers can also search a person and his

---

[1] Although the text of the Fourth Amendment requires probable cause only for the issuance of judicial warrants, the same quantum of suspicion is necessary to justify warrantless searches and seizures because to require less would frustrate the amendment's preference for judicial oversight. *Wong Sun v. United States*, 371 U.S. 471, 479 (1963).

immediate vicinity incident to a lawful custodial arrest without further justification. *Chimel v. California*, 395 U.S. 752, 763 (1969); *Weeks v. United States*, 232 U.S. 383, 392 (1914).

In a recent line of authority, this Court has refined the requisite Fourth Amendment justification for dispensing with individualized suspicion by requiring a showing of "special needs, beyond the normal need for law enforcement." *Chandler v. Miller*, 117 S. Ct. 1295, 1301 (1997); *Vernonia School Dist. 47J v. Acton*, 115 S. Ct. 2386, 2391 (1995); *Treasury Employees v. Von Raab*, 489 U.S. 656, 665-66 (1989); *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 619 (1989).

As discussed in Part II, "special needs" are lacking. Therefore, established Fourth Amendment principles on search incident to arrest and probable cause are sufficient to establish that the search of Knowles's vehicle was unreasonable.

### C. The Search Incident to Arrest Exception Requires a Custodial Arrest

#### 1. The Search Incident to Arrest Exception

The authority of police officers to search incident to a lawful arrest in order to uncover fruits of the crime has been long established in both English and American law. *Weeks v. United States*, 232 U.S. 383, 392 (1914). Under this exception, an officer may search a person incident to a custodial arrest. *United States v. Robinson*, 414 U.S. 218, 235 (1973); *Gustafson v. Florida*, 414 U.S. 260, 265-66 (1973). "In the case of a lawful *custodial* arrest a full search of the



person is not only an exception to the warrant requirement of the Fourth Amendment, but it is also a 'reasonable' search under that Amendment." *Robinson*, 414 U.S. at 235 (emphasis added).

The crux of the *Robinson* opinion is that it is the fact of the custodial arrest that gives the officer the authority to search the defendant. *Id.* at 234-35. *Robinson* does not require further determination of probable cause once the person is placed in custody. *Id.* at 236. The *Gustafson* Court outlined the determinative factors in a search incident to arrest: The officer had probable cause to arrest, he effectuated the arrest, and he placed the defendant in custody. *Gustafson*, 414 U.S. at 265.

The justifications for creating this exception are twofold: (1) To disarm the suspect in order to take him into custody without threatening the safety of the officer; and (2) to preserve evidence for later use at trial. *Robinson*, 414 U.S. at 234. For these reasons, all custodial arrests are treated alike without the necessity of further determination of probable cause to search. *Id.* at 235.

An officer who places a person under lawful custodial arrest may also search the area within the arrestee's immediate control. *Chimel v. California*, 395 U.S. 752, 762-63 (1969). The scope of a search incident to a custodial arrest of a motorist extends to the entire passenger compartment of the automobile, including any containers therein. *New York v. Belton*, 453 U.S. 454, 460 (1981). The holdings of *Robinson*, *Gustafson*, *Chimel*, and *Belton* all presuppose a full custodial arrest to justify the ensuing search.

### 2. *Robinson* Does Not Apply Without Custodial Arrest

The brief detention necessary to issue a traffic citation is not the functional equivalent of an arrest. The *Robinson* Court tacitly distinguished between a search incident to a custodial arrest and a search incident to a routine traffic stop by specifically declining to address the issue of whether a search would be permitted where there was only a routine traffic stop and not a full custodial arrest. *Robinson*, 414 U.S. at 235 n.6.

Again, in *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984), this Court stated that "the usual traffic stop is more analogous to a so-called *Terry*-stop than to a formal arrest," and, therefore, a person detained for a traffic stop is not in custody for purposes of *Miranda*. *Id.* at 439-40. The "detention of a motorist pursuant to a traffic stop is presumptively temporary and brief. The vast majority of detentions last only a few minutes." *Id.* at 437. A motorist expects to be detained only temporarily while the officer checks the license and registration and issues a citation. *Id.*

Similarly, the intrusion at motor vehicle checkpoints near the border to enforce immigration laws are "quite limited" under the Fourth Amendment. *United States v. Martinez-Fuerte*, 428 U.S. 543, 557-58 (1976). Again, in *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 451-52 (1990), this Court found only a "slight" Fourth Amendment intrusion in the brief detention of motorists at a sobriety checkpoint.

"Where there is no formal arrest . . . a person might well be less hostile to the police and less likely to take



conspicuous, immediate steps to destroy incriminating evidence. . . . " *Cupp v. Murphy*, 412 U.S. 291, 296 (1973). Therefore, a full *Chimel* search is not justified without a formal arrest. *Id.*

The federal circuit court in *Robinson* discussed the difference between a routine traffic stop and a custodial arrest. *United States v. Robinson*, 471 F.2d 1082, 1096-97 (D.C. Cir. 1972), *reversed on other grounds*, 414 U.S. 218 (1973). First, the court noted that the dangers to a police officer in a routine traffic stop are similar to and no greater than the threat involved in *Terry v. Ohio*. *Id.* at 1096. This is because the traffic stop is a brief encounter, and the vast majority of those stopped are law abiding citizens. *Id.* There is always a possibility of violence, but the mere possibility of danger to the officer is not enough to justify any type of search, including a *Terry* pat-down. *Id.*

This Court agreed with the lower court that a custodial arrest typically presents a greater degree of danger to the police officer than an investigatory stop:

> It is scarcely open to doubt that the danger to an officer is far greater in the case of the extended exposure which follows the taking of a suspect into custody and transporting him to the police station than in the case of the relatively fleeting contact resulting from the typical *Terry*-type stop. This is an adequate basis for treating all custodial arrests alike for purposes of search justification.

*Robinson*, 414 U.S. at 234-35.

A traffic stop is certainly different from a full custodial arrest. The Iowa Supreme Court has equated the two

for purposes of a search with virtually no constitutional justification. The *Robinson* Court explained that the justification behind the search incident to arrest exception rests equally on the need to disarm a suspect as the need to preserve evidence to be used at trial. *Id.* at 234. The issuance of a citation, however, does not present the same concerns which support the search incident to arrest.

One who is arrested may be likely to try to escape to avoid prosecution. In addition, the officer will be exposed to the person for an extended period of time at the scene and in route to the police station. The danger to the officer in these circumstances is greater than when the officer only briefly detains a motorist for a traffic infraction. The motorist would be less likely to use violence against the officer if he knows he will be on his way once the citation is issued.

In addition, when an arrest is made, the person is more likely to attempt to destroy evidence, again, hoping to avoid prosecution that is certain once he has been placed in custody. There is no evidence a motorist could destroy to avoid prosecution for speeding.

The concerns that justify the bright-line search incident to arrest exception do not exist when there is no arrest. Iowa's extension of this exception to the warrant requirement endorses an unconstitutional warrantless search.

Although this issue remains undecided in this Court, numerous state and federal courts have interpreted the search incident to arrest exception to require a custodial



arrest.[2] For instance, according to the Ninth Circuit, a police officer cannot search a person incident to an arrest unless the officer places him in custody. *United States v. Mota*, 982 F.2d 1384, 1386 (9th Cir. 1993); *United States v. Parr*, 843 F.2d 1228, 1230 (9th Cir. 1988). In Wisconsin, an officer cannot conduct a search incident to arrest unless the person has actually been arrested and placed in custody. *State v. Swanson*, 475 N.W.2d 148, 155 (Wis. 1991). It is not sufficient that he had probable cause to arrest but in fact did not make an arrest. *Id.* The Colorado Supreme Court has held that *Robinson* and *Gustafson* require a custodial arrest in order to search, and a temporary detention does not constitute a custodial arrest. *People v. Bland*, 884 P.2d 312, 317 (Colo. 1994). Citing *Robinson*, a Maryland court has determined the search incident to arrest exception encompasses only in-custody arrests. *Dougherty v. State*, 392 A.2d 1165, 1167 (Md. Spec. App. 1978).

---

[2] *United States v. Walker*, 933 F.2d 812, 815 (10th Cir. 1991) (stop for speeding is more like a *Terry* stop than a custodial arrest); *State v. Davis*, 477 So. 2d 504, 506 (Ala. Ct. App. 1985) (without a lawful custodial arrest, no authority for a full search under the search incident to arrest exception); *Thomas v. State*, 453 So. 2d 1075, 1077 (Ala. Ct. App. 1984) ("search-incident-to-arrest exception to the warrant requirement arises only when there is a custodial arrest"); *People v. Meredith*, 763 P.2d 562, 565-66 (Colo. 1988) (police officer may not search when only a summons is issued); *State v. Ledbetter*, 540 P.2d 824, 826 (N.M. Ct. App. 1975) (where driver was not taken into custody for the driving violation, *Robinson* not applicable, and the search cannot be justified by the search incident to arrest exception); *Linnett v. State*, 647 S.W.2d 672, 674-75 (Tex. Ct. App. 1983) (*Belton* not applicable unless there is a custodial arrest).

Arizona's code allows an officer to release an arrested person from custody in lieu of taking him to the police station. Ariz. Rev. Stat. § 13-3903(A) (1989). The statute also states that such a release on citation does not limit the officer's authority to search. *Id.* § 13-3903(F). The Arizona Court of Appeals held that police officers must take a person into custody before he can search incident to an arrest. *State v. Taylor*, 808 P.2d 324, 324-25 (Ariz. Ct. App. 1990), *rev. denied*, 821 P.2d 166 (Ariz. 1991), *cert. denied*, 503 U.S. 998 (1992).

The American Bar Association (ABA) issued standards on statutes which allow a police officer to issue a citation in lieu of arrest. ABA Standard 10-2.3 (1986) states that the officer who has probable cause to arrest may issue a citation in lieu of arrest or continued custody. In addition, ABA Standard 10-2.4, which is similar to Iowa's statute, states, "Nothing in these standards should be construed to affect a law enforcement officer's authority to conduct an otherwise lawful search even though a citation is issued." ABA Standard § 10-2.4 (1986) (History of Standard). The ABA changed the standard to read as follows: "When an officer makes a lawful arrest, the defendant's subsequent release on citation should not affect the lawfulness of any search incident to the arrest." *Id.* The ABA changed the standard because the original draft could mistakenly be interpreted to allow a search when the defendant is given only a citation and not placed under arrest. *Id.* (citing *Robinson*, 414 U.S. at 235).

In this case, Knowles was not under arrest. He had been stopped for speeding, and the officer had already written and issued the citation when he conducted the



search. (App. p. 17). The officer testified at the suppression hearing that he "opted to cite in lieu of arrest." (App. p. 14). This citation was issued pursuant to the Iowa statute allowing the officer to issue a citation *in lieu* of arrest. Iowa Code § 805.1 (1997). In Iowa, an arrest is "the taking of a person into custody." *Id.* § 804.5. There is no question that Knowles was not under custodial arrest at the time of the vehicle search. The search, therefore, cannot be justified as a search incident to arrest. Therefore, since the search does not fall under any exception to the warrant requirement, Fourth Amendment jurisprudence dictates that the officer must have had probable cause to search the vehicle.

### D. Probable Cause is Required to Search in Absence of a Custodial Arrest

Automobiles are effects under the Fourth Amendment and are protected against unreasonable searches and seizures. *United States v. Chadwick*, 433 U.S. 1, 10 (1977). When a state enacts a law designed to assist law enforcement, it may not authorize police conduct that violates the Fourth Amendment. *Sibron v. New York*, 392 U.S. 40, 61 (1968). The Fourth Amendment forbids any search that is not pursuant to a warrant based on probable cause. U.S. Const. amend. IV.

However, under the automobile exception, an officer may search a vehicle without a warrant if he has probable cause to do so. *Carroll v. United States*, 267 U.S. 132, 153 (1925); *California v. Carney*, 471 U.S. 386, 390 (1985). This narrow exception arose because the mobility of an automobile made it impracticable to secure a warrant. *Carroll*,

267 U.S. at 153. However, "the *Carroll* doctrine does not declare a field day for the police in searching automobiles. Automobile or no automobile, there must be probable cause for the search." *Almeida-Sanchez v. United States*, 413 U.S. 266, 269 (1973).

At issue in *Almeida-Sanchez* was whether the Border Patrol could search an individual stopped 25 miles from the border and search his car without a warrant or without probable cause or consent. *Id.* at 267-68. This unfettered discretion in the hands of the Border Patrol did not conform to the minimal requirement of the Fourth Amendment that searches be based on probable cause. *Id.* at 270. Likewise Iowa's law conveys unfettered discretion upon the police officers to search at will.

A traffic stop, although giving an officer probable cause to arrest the motorist for the traffic infraction, does not provide the officer probable cause to search. The probable cause necessary to arrest a person is different from the probable cause required to search. *See* 3 LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 5.2(c), at 74 (1996). Speeding does not give an officer probable cause to conduct a search, like other, more serious crimes might. For instance, the circumstances surrounding a burglary arrest may give rise to probable cause to search for fruits of the crime. Speeding, on the other hand, does not establish probable cause to search for evidence of speeding.

In *Michigan v. Long*, 463 U.S. 1032, 1049 (1983), this Court approved in essence a "*Terry* pat-down" of an automobile. An officer may search the areas of an automobile where a weapon may be hidden if the officer has a



"reasonable belief based on 'specific and articulable facts which . . . reasonably warrant' the officer in believing that the suspect is dangerous and the suspect may gain immediate control of a weapon." *Id.* However, a police officer may not conduct an automobile search following any investigatory stop. *Id.* at 1049 n.14. Such a search is only allowed when the officer effectuates a "custodial arrest" under *Belton*. *Id.*

This result in *Long* would have been different under Iowa law. Long was driving erratically at an excessive speed and ended up in a ditch. *Id.* at 1035. The officers approached to investigate and eventually noticed a knife in the car. *Id.* at 1036. Under Iowa law, this officer would have been authorized to conduct a full search of both Long and the automobile based on the fact that the officer could have arrested him for speeding or failure to maintain control of his automobile. This Court, however held that the search, which consisted of shining a flashlight in the car, was justified under *Terry*, but an automatic full search would not be justified unless there had been an arrest. *Id.* at 1036, 1039.

If an officer wishes to search a vehicle after issuing a speeding citation, he must have probable cause that there is evidence of speeding or some other crime. In addition, he would have to establish probable cause to believe the specified evidence was in the vehicle he wished to search. The officer in this case admitted he was not looking for evidence of speeding. (App. p. 18). If there is no probable cause to search, once the officer issues the citation for the infraction, the motorist must be allowed to proceed on his way, not subjected to a search.

Many courts have considered traffic stops to be similar to *Terry* investigative stops, requiring additional suspicion before allowing a search.[3] For example, in Illinois, a routine traffic stop does not alone justify a search of the motorist or his vehicle. *People v. Penny*, 544 N.E.2d 1015, 1017 (Ill. Ct. App. 1989). The officer is required to have suspicion that the situation is more than a routine traffic stop in order to search. *Id.* In Pennsylvania, the courts have held that a police officer may not conduct a search

---

[3] *United States v. Walker*, 933 F.2d 812, 815 (10th Cir. 1991) (reasonableness of a traffic stop is judged under *Terry*); *United States v. Tapia*, 912 F.2d 1367, 1370 (11th Cir. 1990) (traffic stops are treated like *Terry* stops); *State v. Washington*, 623 So. 2d 392, 395 (Ala. Crim. App. 1993) (requiring suspicion of criminal activity if motorist stopped for traffic violation is to be further detained or searched following issuance of citation); *People v. Meredith*, 763 P.2d 562, 565-66 (Colo. 1988) (police officer may not search incident to a traffic stop if the circumstances involve temporary detention of a motorist for issuance of a summons); *Johnson v. State*, 537 So. 2d 117, 119 (Fla. Ct. App. 1988) (stop for a traffic offense gives no reason to search); *People v. Koutsakis*, 649 N.E.2d 605, 608 (Ill. Ct. App. 1995) (traffic stop is more like a *Terry* stop than a formal arrest); *People v. Guzman*, 551 N.Y.S.2d 709, 711 (N.Y. App. Div. 1990) (traffic violation does not justify a search of the vehicle); *State v. Braxton*, 368 S.E.2d 56, 57-59 (N.C. Ct. App. 1988) (where motorist is stopped for speeding and not arrested, the police officer may not search); *State v. Taylor*, 683 N.E.2d 367, 370 (Ohio Ct. App. 1996) (no search is allowed when only a citation is issued); *State v. Flores*, 685 P.2d 999, 1005 (Or. Ct. App. 1984) (routine traffic stop is not sufficient cause to conduct a search and probable cause is required); *Commonwealth v. Grosso*, 672 A.2d 792, 794 (Pa. Super. Ct. 1996) (police officer must have independent probable cause to search during a routine traffic stop); *State v. Henry*, 910 P.2d 1290, 1293 (Wash. Ct. App. 1995) (police officer cannot use traffic stops as a basis for routine investigative search).



of a vehicle during a routine traffic stop unless he has independent probable cause that there is evidence in the vehicle. *See Commonwealth v. Grosso*, 672 A.2d 792 (Pa. Super. Ct. 1996).

In fact, this Court has found a traffic stop is similar to a *Terry* stop for purposes of *Miranda*. *Berkemer*, 468 U.S. at 439. The rule should be no different for a search. For Iowa to authorize a search that is not based on probable cause, or any level of suspicion for that matter, is contrary to the Constitution. The officer in this case admitted he did not have probable cause or suspicion to search Knowles's vehicle. (App. pp. 17-18). Knowles did not consent to the search. (App. p. 15). The marijuana was not in plain view. (App. p. 16). The search was not incident to a custodial arrest. (App. p. 14). Having no basis under the Fourth Amendment, the search in this case should have been declared unconstitutional and the evidence should have been suppressed.

## II. EXPANDING POLICE AUTHORITY TO SEARCH INCIDENT TO CITATION ABSENT PROBABLE CAUSE THREATENS THE SECURITY OF THE CITIZENRY AND IS NOT COMPELLED BY THE INVESTIGATIVE NECESSITY OF THE OFFICER

### A. Introduction

The *Robinson* Court specifically declined to address the issue of whether a search incident to a routine traffic stop is authorized under the search incident to arrest exception to the warrant requirement. *Robinson*, 414 U.S. at 235 n.6. The Iowa legislature nonetheless extended the search incident to arrest exception to include a search

incident to a citation. *State v. Cook*, 530 N.W.2d 728, 731 (Iowa 1995) (stating that "[t]he Iowa legislation has . . . created a search incident to issuance of a citation exception to the search warrant requirement"). Based on this new exception, the Iowa Supreme Court upheld the search of Knowles's vehicle. *State v. Knowles*, 569 N.W.2d 601, 602-03 (Iowa 1997). Iowa's law that equates a citation with a custodial arrest is a qualitative expansion of police authority that creates an unprecedented exception to the probable cause requirement of the Fourth Amendment. Given the already extensive grant of police power to arrest motorists and search their vehicles, there is no "special need" to create a monstrous enforcement tool that will unnecessarily deprive otherwise law-abiding citizens of privacy rights.

### B. The Iowa Law's Reach is Expansive and Will Subject Millions of Citizens to Intrusive Searches for the Most Minor of Offenses

The search incident to citation law effects the personal security of hundreds of thousands of otherwise law-abiding Iowa citizens. The law confers upon police a blanket authority to search upon citing a citizen for an offense whenever he could have arrested. Since Iowa authorizes police to arrest for all traffic and motor vehicle equipment infractions, as well as violations of municipal codes, the breadth of the intrusion is monumental. *See* Iowa Code § 321.485 (1997); *State v. Ceron*, 573 N.W.2d 587, 590 (Iowa 1997).



A person may be searched for failing to have his or her dog leashed,[4] or licensed.[5] A police officer may also conduct a full-scale search upon citing a citizen for such minor infractions as jaywalking,[6] muffler violations,[7] not wearing a seat belt,[8] or failing to have a license displayed on a bicycle.[9] The possibilities are endless, subjecting millions of people to the unfettered authority of the state to conduct the most intrusive of searches for petty and technical violations of the law.

The Iowa statute is also particularly intrusive because it confers blanket or "bright-line" authority, entirely dispensing with individualized suspicion or case-by-case judicial scrutiny. As the dissenting judge in *Knowles* pointed out, "[t]he constitutional reasonableness of a statute that purports to authorize a search that is neither pursuant to warrant, incident to custodial arrest, or based on probable cause simply cannot be decided in the abstract." *Knowles*, 569 N.W.2d at 603 (Neuman, J., dissenting). Such a search can only be decided on a case-by-case basis. *Id.* (Neuman, J., dissenting) (citing *Sibron*, 392 U.S. at 59).

Bright-line rules are generally not favored; rather, each factual situation must be considered individually when determining the reasonableness of a search. *Ohio v.*

---

[4] Newton, Iowa, Code § 11.0353.2(J) (1993).

[5] Newton, Iowa, Code § 13.0313 (1993).

[6] Iowa Code § 321.328 (1997).

[7] Iowa Code § 321.436 (1997).

[8] Iowa Code § 321.445 (1997).

[9] Newton, Iowa, Code § 11.1102 (1993).

*Robinette*, 117 S. Ct. 417, 421 (1996) (observing bright-line rules are generally disavowed in favor of a fact-specific determination of reasonableness). "The constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." *Sibron*, 392 U.S. at 59.

The expansive scope of Iowa's search incident to citation law coupled, with "bright-line" authority which insulates individual searches from meaningful judicial scrutiny, creates a substantial intrusion on citizens' privacy under any Fourth Amendment analysis.

### C. This Search is Intrusive and Humiliating When Compared to the Gravity of Conduct and Lack of Government Interest

Whenever a person is stopped by law enforcement, he is seized under the Fourth Amendment. *Terry*, 392 U.S. at 16. Any search of the seized person, even a limited pat-down, is not considered a "petty indignity". *Id.* at 17. "It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly." *Id.* If an investigative stop such as the one at issue in *Terry* is a "serious intrusion," a traffic stop followed by a full-blown search is certainly a severe intrusion into the privacy and integrity of the motorist.

Since Iowa's search incident to citation law is expansive and intrusive, authorizing a full-blown search without individualized suspicion, there must be a substantive governmental need to justify the curtailment of privacy rights.



As discussed in Part I, Fourth Amendment reasonableness analysis allows a warrantless search without probable cause or individualized suspicion if "special needs" counter-balance the intrusion. *Vernonia*, 115 S. Ct. at 2391; *Von Raab*, 489 U.S. at 665-66. Any governmental assertion of "special needs" to search its citizens without suspicion must logically be judged against the law enforcement tools already available to meet these needs.

Police in Iowa have the full authority allowed by the Fourth Amendment to search and seize citizens and their automobiles.[10] This includes the ability to search a person or vehicle incident to arrest, to conduct protective pat downs under *Terry v. Ohio* and *Michigan v. Long*, to search an automobile without a warrant under *Carroll v. United States*, and to remove a driver and passengers from a vehicle. *Maryland v. Wilson*, 117 S. Ct. 882, 884 (1997); *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977). But most importantly, Iowa has taken full advantage of *United States v. Robinson* by establishing the right to arrest for all traffic, equipment, and municipal offenses. It is almost impossible in Iowa to have grounds to stop and detain a motorist without also having authority to arrest and search. With this authority already in pocket, how can there be a "special need" for additional search powers?

---

[10] Petitioner can find no instances where an Iowa constitutional provision, statute, or judicial decision restricts police authority beyond what is proscribed under the Fourth Amendment to the United States Constitution. *See Cooper v. California*, 386 U.S. 58, 62 (1967) (States are free to enact search and seizure safeguards more stringent than required by the Federal Constitution.).

The answer is that Iowa cannot demonstrate a "special need" to search its citizens incident to issuance of a citation. If the governmental need were dire, then the State could simply arrest and search all traffic offenders. This is constitutionally permissible and Iowa law allows it.

### D. The Potential for Discriminatory Enforcement is Intolerable

Iowa's search incident to citation statute provides police with no standards or guidance as to when and against whom it should be invoked. A police officer making a traffic stop has complete discretion to search or not to search.

The statute does not require the officer to document his search. Thus, there is no effective means to track the frequency and manner in which the search power is exercised. Also, because the statute purports to authorize a blanket or "bright-line" search, there can be no judicial case-by-case assessment of reasonableness.

Thus, the police officer is entirely free to exercise this search power at his reasoned discretion, at his whim, or in a discriminatory fashion. Whatever the choice, there is no possibility of judicial oversight.

On the other hand, the requirement of an arrest as a predicate to a search will at least temper the officer's discretion because the required documentation will allow assessment of how and against whom this authority is exercised.



If police officers are required to either arrest the motorist and place him in custody or demonstrate probable cause to justify the search, the police will not have the unfettered power to invade the privacy of any citizen by merely issuing a citation. If the officer wishes to search a motorist whom he has stopped for failing to wear a seat belt, he should be required to arrest the motorist. Therefore, police officers will only arrest those whom he actually suspects of criminal activity beyond the traffic violation.

Finally, one may argue that *Whren v. United States*, 116 S. Ct. 1769 (1996), has removed a police officer's subjective intent from all case-by-case Fourth Amendment analysis. However, this should not justify ignoring the potential for discriminatory enforcement as a policy consideration in deciding whether to create additional bright-line authority to conduct warrantless searches. The likelihood of abuse and the absence of safeguards protecting privacy must always be considered in balancing governmental needs against the extent of the intrusion. *T.L.O.*, 469 U.S. at 342 n.8; *Delaware v. Prouse*, 440 U.S. 648, 654-55 (1979).

" 'Nothing is more clear than that the Fourth Amendment was meant to prevent wholesale intrusions upon the personal security of our citizenry, whether these intrusions be termed arrests or investigatory detentions.' " *Cupp v. Murphy*, 412 U.S. 291, 294 (1973) (quoting *Davis v. Mississippi*, 394 U.S. 721, 726-27 (1969)). Iowa's all-encompassing law allowing searches based on the most minor of infractions without probable cause surely authorizes a

wholesale intrusion on the personal security of the citizens of Iowa.

## CONCLUSION

The search of Knowles's vehicle was unreasonable and therefore unconstitutional intrusion into his privacy rights. For these reasons, the petitioner, Patrick Knowles, respectfully requests this Court reverse the decision of the Iowa Supreme Court.

PAUL ROSENBERG
*(Counsel of Record)*
MARIA RUHTENBERG
PAUL ROSENBERG &
ASSOCIATES, P.C.
601 Locust Street, Suite 1022
Des Moines, Iowa 50309
Telephone: (515) 245-3828

*Counsel for Petitioner*